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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,945	07/23/2001	Dan Kikinis	P1544D1	8414

24739 7590 05/11/2005

CENTRAL COAST PATENT AGENCY  
PO BOX 187  
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EXAMINER
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CARDONE, JASON D

ART UNIT	PAPER NUMBER
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2145

DATE MAILED: 05/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/911,945

Applicant(s)

KIKINIS, DAN

Examiner

Jason D. Cardone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8-10,13 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-10,13 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is responsive to the amendment of the applicant, filed on 2/11/05.

Claims 8-10, 13 and 14 are presented for further examination.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 8 and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 8 and 13 disclose data entities may be "interspersed" with and transmitted "simultaneously" with other data entities. The specification does not disclose "interspersed" or "simultaneously". Therefore claims 8 and 13 fail to comply with the written description requirement.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 8-10, 13 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Liebowitz et al. ("Liebowitz"), USPN 5,812,545.

6. Regarding claim 8, Liebowitz discloses a broadband data transmission system comprising: a high priority queue reserved for data entities requiring that data entities be sent in a successive fashion at or above a minimum rate [ie. real-time data queue, Liebowitz, col. 5, lines 1-20]; a lower priority data entity queue [ie. non-real time data queue, Liebowitz, col. 5, lines 9-29]; and

control routines adapted for dividing large data entities in the lower priority queue into multiple smaller data entities of a size that may be interspersed with and transmitted simultaneously with data entities from the high priority queue without causing the rate of transmission of the high priority entities to fall below the minimum rate [ie. fragment non-real time data to transmit over satellite, Liebowitz, col. 5, lines 17-48, col. 10, lines 48-65 and col. 11, lines 41-65].

7. Regarding claim 9, Liebowitz further discloses the transmission system comprises a satellite transmission system [Liebowitz, col. 6, lines 56-62].

8. Regarding claim 10, Liebowitz further discloses upon dividing a large data entity into multiple smaller data entities for transmission, the control routines prepare a division key for transmission to a user, the division key adapted to aid in resembling the

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multiple data entities back into the undivided larger data entity [Liebowitz, col. 4, lines 51-67 and col. 6, line 56 – col. 7, line 14].

9. Regarding claims 13 and 14, they are method claims that correspond to the apparatus in claims 8-10, respectively. Therefore, the similar limitations are disclosed under Liebowitz for the same reasons in the rejection of claims 8-10 [Supra 8-10].

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 8-10, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yong et al. ("Yong"), USPN 5,541,919, in view of Clark et al. ("Clark"), USPN 5,864,747.

12. Regarding claim 8, Yong discloses a data transmission system comprising:

a high priority queue reserved for data entities requiring that data entities be sent in a successive fashion at or above a minimum; a lower priority data entity queue [Yong, col. 3, lines 27-47 and col. 4, line 40 – col. 5, line 6]; and

control routines adapted for dividing large data entities in the lower priority queue into multiple smaller data entities of a size that may be interspersed with and

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transmitted simultaneously with data entities from the high priority queue [Yong, col. 3, lines 27-47, col. 4, line 40 – col. 5, line 6, and col. 9, line 43 – col. 10, line 15].

Yong does not specifically disclose a broadband transmission and transmitting without causing the rate of transmission of the to fall below the minimum rate. However, Clark, in the same field of endeavor, discloses satellite broadband transmission of packets at the correct rate [Clark, col. 1, lines 11-36, col. 6, lines 4-33 and col. 7, lines 27-45] with a similar system as Yong. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have satellite transmissions with rates, taught by Clark, into the priority-based transmission system, taught by Yong, in order to be more global and regulating the transmission.

13. Regarding claim 9, Yong-Clark further discloses the transmission system comprises a satellite transmission system [Yong, col. 1, lines 13-26] [Clark, col. 1, lines 11-36].

14. Regarding claim 10, Yong-Clark further discloses upon dividing a large data entity into multiple smaller data entities for transmission, the control routines prepare a division key for transmission to a user, the division key adapted to aid in reassembling the multiple data entities back into the undivided larger data entity [Yong, col. 5, lines 15-66 and col.9, lines 15-59] [Clark, col. 6, lines 4-33].

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15. Regarding claims 13 and 14, they are method claims that correspond to the apparatus in claims 8-10, respectively. Therefore, the similar limitations are disclosed under Yong-Clark for the same reasons set forth in the rejection of claims 8-10 [Supra 8-10].

### ***Response to Arguments***

16. Applicant's arguments filed 2/11/05 have been fully considered but they are not persuasive.

17. (A) Liebowitz does not disclose data entities may be interspersed with and transmitted simultaneously with other data entities

As to point (A), the Examiner could not find the use of these terms within the specification. Liebowitz does disclose transmitting data entities together over a satellite transmission [ie. fragment non-real time data to transmit over satellite, Liebowitz, col. 5, lines 17-48, col. 10, lines 48-65 and col. 11, lines 41-65]. It is noted that the features upon which applicant relies in the remarks on page 7 (i.e., between bursts, without disruption of video stream, ....) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

18. (B) Yong does not disclose data entities may be interspersed with and transmitted simultaneously with other data entities.

As to point (B), the Examiner could not find the use of these terms within the specification. Yong does disclose transmitting data entities together [Yong, col. 4, line 40 – col. 5, line 6, and col. 9, line 43 – col. 10, line 15]. It is noted that the features upon which applicant relies in the remarks on page 7 (i.e., between bursts, without disruption of video stream, ....) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Conclusion***

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

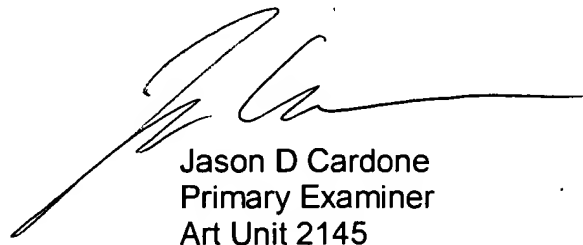


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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason D. Cardone whose telephone number is (571) 272-3933. The examiner can normally be reached on Mon.-Th. (6AM-3PM). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on (571) 272-6159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jason D Cardone  
Primary Examiner  
Art Unit 2145

May 6, 2005